Supreme Court, U.S.
FILED

No. 02158 7 APR 1 8 2003

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In The

Supreme Court of the United States

TERRY DAHL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the "notwithstanding any other provision of law" phrase contained in an appropriations measure (Public Law 104-134) authorize the United States Forest Service to bypass non-conflicting substantantive law when it established a program, without rulemaking authority, wherein it authorized that a new class of person (recreationist) can be prosecuted for recreational conduct in our national forests when the recreationist failed to pay a fee?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Terry Dahl, respectfully petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is attached. (App. 1). An order redesignating the Ninth Circuit's memorandum disposition for publication was filed on December 24, 2002. (App. 1). An en banc petition to review the Ninth Circuit Panel decision was denied on January 29, 2003. (App. 20). The opinion and order of the District Court are unreported.

JURISDICTION

A Memorandum Disposition of the Court of Appeals for the Ninth Circuit was filed on October 11, 2002. (App. 1). An order redesignating the memorandum for publication was filed on December 24, 2002. (App. 1). A petition for rehearing en banc was denied on January 29, 2003. (App. 20). The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 1 of the United States Constitution; and the statutory provisions to be addressed herein, are set forth in the Appendix to this Petition.

STATEMENT OF THE CASE

This case challenges the authority of the United States Forest Service in Southern California to unilaterally implement a program that combines four national forests in Southern California for the purposes of charging fees to persons entering thereon for recreational purposes, and to charge such fees anywhere within the four national forests, a geographic area 1,500 square miles larger then the state of Connecticut. This case further challenges the authority of the Forest Service to criminally prosecute Petitioner for riding his bicycle on forest roads.

The Court below upheld the authority of the Forest Service to implement its program, but found that Petitioner was guilty of an infraction rather than a Class B misdemeanor. (App. 7).

A. BACKGROUND

Section 315 of Title 3 of the Omnibus Consolidated Rescission and Appropriations Act of 1996 (Public Law 104-134; hereinafter "Section 315") requires the Forest Service, among other things, to implement a recreational Fee Demonstration Program on selected Federal land, to demonstrate the feasibility of user-generated cost recovery for the operation and maintenance of recreational areas on

those lands. Section 315(a). (App. 38). Under the demonstration program, the Secretary is authorized to charge and collect fees for admission to, or for the use of, selected outdoor recreational sites. Section 315(b)(1). (App. 38, 39, 40). No limit is currently placed on the number of "areas" or "sites" the Forest Service can select. (PL 107-63 Sec. 312, 115 Stat. 466 (2001). When Petitioner was charged, the limit on the number of areas to be selected was 100. (App. 38).

Section 315 also authorizes a deviation in law with respect to how the revenue collected may be allocated, permitting much of the money to be spent on site. Section 315(c). (App. 39).

The Land and Water Conservation Fund Act (LWCFA), not expressly repealed by Section 315, provides definitions and guidelines for the selection of areas and sites once the use fees are authorized. 16 U.S.C. § 460l-6a. (App. 21, 42). LWCFA also prohibits the Service from charging fees for the use of forest roads. (App. 27). Petitioner was riding his bike on forest roads. (App. 46, 47, 48). Section 315 provides that the Forest Service shall not promulgate regulations or rules implementing the provisions of the Act. Section 315(e). (App. 42).

Relying on the authority of Section 315, the Forest Service, in Southern California, determined that all four national forests in Southern California would be designated as one area in which to charge a fee to persons who use the forest for recreational purposes. (App. 12). The Service did not consider the criteria in the LWCFA which provides the guidelines for selecting areas, as it treated Sec. 315 as a separate and distinct authority. (App. 53, 54).

The policy is implemented by the Forest Service by instructing all motorists who park cars in the forest to purchase and display a pass. (App. 12). Section 315 has been periodically extended by way of appropriations measures and is currently due to sunset in 2004. PL 107-63 Sec. 312, 115 Stat. 466 (2001).

Petitioner, Mr. Dahl, was prosecuted for failing to pay a use fee while recreating. (App. 55). The Forest Service relied solely on the authority of Section 315, a part of an appropriations measure, to prosecute Petitioner. (App. 2, 3). He was charged under 36 C.F.R. 261.15, which states that "Failing to pay any fee established for admission or entrance to or use of a site, facility, equipment or service furnished by the United States is prohibited. The maximum fine shall not exceed $100." 36 C.F.R. 261.15 is a rule promulgated pursuant to legislative direction in the LWCFA, 16 U.S.C. § 460l-6a(e), which states that "in accordance with the provisions of this section, the heads of appropriate departments and agencies may prescribe rules and regulations for areas under their administration for the collection of any fee established pursuant to this section. (App. 29). The rule was promulgated in 1981 and references the LWCFA as its enabling authority.

This case presents important questions of law concerning the authority of the Forest Service to, by way of an appropriations measure, criminally prosecute persons who recreate in the forest where no statute authorizes such prosecution for recreational conduct. The Ninth Circuit, having published its memorandum disposition, has ruled in a manner which affects thousands of citizens wishing to access all four forests in Southern California, who wish to walk or ride bikes in dispersed areas of these contiguous forests.

Further, this case involves significant statutory construction questions with respect to whether or not the general phrase "notwithstanding any other provision of law" in the appropriations measure can be construed to bypass substantive non-conflicting statutory provisions contained in the LWCFA which set forth the criteria for determining what areas or sites may be considered for charging fees.

The Separation of Powers Doctrine (Article I, Section 1 of the United States Constitution) is at issue in this case with respect to whether or not the general provisions contained in an appropriations measure can be construed to constitutionally delegate legislative power to executive agencies (i.e., the Forest Service) to unilaterally, without rulemaking, establish a program that imposes criminal sanctions on persons for the conduct of recreating, and to use 36 C.F.R. 216.15 as its charging authority. Specifically, the Court should grant review to the question presented.

First, the decision below construes the "notwithstanding any other provision of law" language to mean that the "Act's Recreational Fee Program is not subject to the constraints of other laws, including those of 16 U.S.C. § 460l-6a." (App. 5). The LWCFA provides the criteria for determining areas and/or sites, and also prohibits the Forest Service from charging persons who use forest roads. The Court below has determined that the provisions of the LWCFA have not been repealed. (App. 5). However the Court construed the "notwithstanding" language to allow the Forest Service to bypass any limiting statutory language governing its discretion.

Second, the opinion below conflicts with settled principles of statutory construction as articulated by this

Court in determining whether or not a prior enacted law on the same subject matter is impliedly repealed by the passage of a latter enacted provision.

Third, the Court below determined that Petitioner's conduct (i.e., riding his bicycle on forest roads) is not "so vague and standardless that it leaves the public uncertain as to what is prohibited." (App. 6). The Court below, however, did not discuss or analyze whether it is constitutionally permissible for the Forest Service to unilaterally determine, without rulemaking, that the general language in an appropriation act, Sec. 315, provided it with authority to prosecute a new class of persons. (i.e., recreationists)

There are no other circuit decisions addressing the questions presented herein. The Fee Demonstration Program was for a limited duration, but has been extended periodically by Congress by way of appropriations measures. PL 107-63 Sec. 312, 115 Stat. 466 (2001). The vast majority of federal forests are in the western states where the issue of charging persons who walk or ride bikes in dispersed areas of the forests is a significant concern. The unrepealed criteria set forth in the LWCFA provide for fees in areas of concentrated use where amenities are provided to the public. (App. 21, 42).

Of even greater importance is the broad impact this case has on separation of powers principles. The Court's interpretation of the "notwithstanding" phrase allows the executive branch of government to unilaterally establish policies which have the effect of criminalizing conduct by way of an Appropriations Act, which Act is not subject to traditional legislative and public scrutiny and the specificity that accompanies the introduction of substantive law.

B. ARGUMENT

1. THE PANEL'S CONSTRUCTION OF THE LANGUAGE "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" IN SECTION 315 DIRECTLY CONFLICTS WITH SETTLED PRINCIPLES OF STATUTORY CONSTRUCTION AS ARTICULATED BY THIS COURT.

The Panel opinion, without analysis, concluded that the "notwithstanding" language in Section 315 means that the fee collection guidelines that follow are not subject to the constraints of other laws, including those of 16 U.S.C. § 460l-6a (LWCFA). (App. 5). The Panel stated that the prior enacted provisions have not been repealed. (App. 5). The opinion, therefore, allows the earlier enacted provisions governing the selection criteria to co-exist with Section 315, but to be given no weight. However, absent an express repeal of the prior enacted provisions setting forth the criteria for selecting areas, an analysis of both laws is required to determine whether or not the "constraining" provision regarding selecting areas subject to fees has been repealed, modified, or amended by the subsequently enacted provisions in the appropriations bill.

Generally, if the prior enacted law can coexist with subsequent law, with no conflict, it must be given weight. *Radzanower v. Touche Ross and Co.*, 426 U.S. 148, 153 (1976). When two statutes are capable of coexistence, it is the duty of the Court to regard each as effective to the extent there is no conflict. *Morton v. Mancari*, 417 U.S. 535, 551 (1974), and, as cited in *Radzanower, supra* at 155 and *In re Glacier Bay*, 944 F.2d 577, 582 (9th Cir. 1991).

Harmonizing two statutes dealing with the same subject matter (i.e., use and admission fees) is required, if at all possible, since repeals by implication are not favored and will not stand unless an intent to repeal is clear and manifest. *Rodriguez v. United States*, 480 U.S. 522, 524 (1987); *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936); *TVA v. Hill* 437 U.S. 153, 189 (1978). The language of the statute must suggest the existence of irreconcilable conflict from which an intent to repeal may be inferred. *Kremer v. Chemical Construction Corporation*, 456 U.S. 461, 486 (1982). The rules of statutory construction apply with even greater force when the claimed repeal rests solely in an appropriations act. Then only a clear repugnance between the previous legislation and the appropriations bill warrants a finding that Congress intended to repeal the previous legislation. *U.S. v. Will*, 449 U.S. 200, 221 (1980); *Environmental Defense Center v. Babbitt*, 73 F.2d 867, 871 (9th Cir. 1995).

The fee collection guidelines referenced by the Court below (Section 315(b)(1)) state that the agency "shall collect fees for the admission to the area for the use of outdoor recreation sites, facilities, visitor centers, equipment and services by individuals and groups or any combination thereof." (App. 38, 39). There is currently no limit on the number of areas and sites that the Forest Service may designate for the collection of fees. Section 315 does not specifically authorize a fee for persons entering the forest for recreational purposes. The prior statute (LWCFA) authorizes admission and use fees on no more than 21 areas and it provides definitions and guidelines for the selection of areas and sites. 16 U.S.C. § 460l-6a(a). (App. 21). The definition of "area" and "site" in LWCFA may be characterized as describing relatively small areas

of high public use where amenities are provided and which allow for a central point of fee collection.

The only irreconcilable conflict between the prior enacted law, LWCFA, and Sec. 315, with respect to this case, is the number of areas which may be selected. Since Section 315 currently places no limit on the number of areas, the section can be construed to have amended the provisions restricting the Forest Service to 21 areas. The fee collection guidelines set forth in Section 315, however, make no mention of the use of roads, and do not define the terms "areas" or "sites."

Section 315 did not expressly repeal or modify the provision setting forth the criteria for selecting areas; nor did it repeal the provision authorizing free use of forest roads. The Court below, however, determined that the "notwithstanding" language contained in the appropriations bill enabled the Forest Service to designate any areas, as it is no longer subject to the "constraints" of prior enacted law. (App. 5). It further found that there was no implied repeal of the provision in the LWCFA by the enactment of Section 315, since there was no "clear and manifest legislative intent supporting Dahl's argument that Congress intended the area selection requirements of 16 U.S.C. § 460l-6a(a) to apply to the Act's recreational fee program." (App. 5).

Petitioner agrees that there is no clear and manifest congressional intent contained in Section 315 requiring the selection criteria be utilized. Therein, however, lies the problem. Without clear intent expressed by Congress, one way or the other, two acts co-exist which deal with the same subject matter, but which have, in part, different provisions.

Section 315 authorizes use and admission fees on an unlimited number of areas. The LWCFA authorizes use and admission fees in twenty-one areas, and sets forth the criteria for selecting areas. (App. 21, 42).

Absent a clear expression of legislative intent, it is well-settled that unless there is an irreconcilable conflict between two laws dealing with the same subject matter, the statutes should be harmonized to the extent possible, since repeals by implication are not favored.

The Court in *Posadas v. National City Bank*, *supra*, 296 U.S. 497, 503, stated that there are two kinds of implied repeal:

> (1) where the provisions of the two acts are in irreconcilable conflict, the latter act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the latter act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier act.

In the instant case, Section 315 does not cover the whole subject matter of the LWCFA. The LWCFA contains many other provisions not addressed in Section 315, including, among other things, provisions for Golden Eagle Passports, annual admission permits, special recreation permits, lifetime admission permits, admission for organized groups, fishing and hunting rights, etc. (App. 21-30). Since Section 315 does not cover the whole subject matter, it must be determined whether or not there are irreconcilable conflicts, and the statutes must be reconciled to the extent possible to give both statutes weight.

The "notwithstanding" phrase must therefore be analyzed to determine if Congress intended to repeal the

non-conflicting substantive provisions in the LWCFA with the enactment of Section 315. Such an analysis was omitted in this Panel opinion and leaves the reader with the view that new precedent has been set by the Court's conclusion that the "notwithstanding" language is overriding, irrespective of the fact that the provisions in prior enacted laws are not in conflict with the latter-enacted law, and are capable of coexistence. This result confers unfettered discretion on the Forest Service to implement policies, without rulemaking, by way of an appropriations act which permits the Service to prosecute citizens for recreating when they are located in areas of the forest where they are statutorily permitted to be free of charge, pursuant to the unrepealed provisions in LWCFA.

2. CONGRESS DID NOT, NOR COULD IT, AUTHORIZE THE FOREST SERVICE, BY WAY OF AN APPROPRIATIONS MEASURE, TO PROSECUTE PERSONS FOR RECREATIONAL CONDUCT.

Section 315, in which the "notwithstanding" phrase is inserted, does not specifically authorize the Forest Service to charge fees for recreating, and to prosecute recreationists who fail to pay. The Court below determined that the act of recreating is not so vague as to offend due process. (App. 6). However, the Forest Service must have appropriate statutory authority to charge persons who do not pay fees while recreating. The only authority the Service relies upon is Section 315, a general provision within an appropriations measure, since it construed Section 315 to be separate and apart from the LWCFA. (App. 53, 54).

The Court below concluded that "in light of the detailed language governing how the program is to operate,

we find clear principles set forth to guide the USFS and no impermissible delegation of power." Section 315 contains detailed language with respect to how funds are to be allocated, which permit much of the money to be spent "on site". (App. 39, 40, 41). The "notwithstanding" phrase is applicable in the context of authorizing a deviation in the allocation of funds, since Section 315 provides a different formula than that contained in LWCFA.

But, absent from the Section 315 is any detailed language with respect to the authority of the Forest Service to charge and prosecute persons who enter the forest for the purpose of recreating.

We recognize that an appropriations act can "legislate." In *Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992), for example, the Ninth Circuit was overruled when it held, in part, that an appropriations act could not effect an implied modification of substantive law because it was embedded in an appropriations measure. This Court, in *Robertson*, held that Congress can amend substantive law in an appropriations statute if it does so clearly. *Id.* at 440, citing *U.S. v. Will*, 449 U.S. 200, 222 (1980).

There is, however, no language in Section 315 that clearly authorizes the Forest Service to bypass substantive provisions of law that provide the criteria for its exercise of discretion. Appropriations acts generally address appropriations issues – the basic subject matter of such acts. *See Andrus v. Sierra Club*, 442 U.S. 347, 361 (1979); *U.S. v. Dickerson*, 310 U.S. 554 (1940); *Friends of the Earth v. Armstrong*, 485 F.2d 1 (10th Cir. 1973); *N.L.R.B. v. Thompson Products*, 141 F.2d 794 (9th Cir. 1944); *Firebaugh Canal Co. v. U.S.*, 203 F.3d 568 (9th Cir. 2000).

No cases have been found that upheld a delegation of legislative authority to the executive branch of government, by way of an appropriations measure, to add a new class of persons (recreationists) to be subject to criminal sanctions.

Congressional guidance is essential if Congress intends to delegate legislative authority so it does not violate the Separation of Powers Doctrine (Article I, Section 1 of the United States Constitution).

While the non-delegation doctrine does not prevent Congress from delegating all authority, it must lay down an intelligible principal to which the person or body authorized to act is directed to conform. *Touby v. U.S.*, 500 U.S. 160, 165 (1991); *J.W. Hampton, Jr. & Co. v. U.S.*, 276 U.S. 394, 409 (1925).

As this Court has held, a delegation is overbroad if we can say there is an absence of standards for the guidance of the administrative action so that it would be impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed. *Yakus v. U.S.*, 321 U.S. 414, 426 (1944).

A delegation is constitutionally sufficient if Congress clearly delineates the policy and the boundaries of the delegated function. *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946) as cited in *Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 219 (1989).

In the context of delegating to an agency the authority to add a new class of citizens subject to criminal sanctions, the Court in *Touby*, *supra*, held a delegation of authority to the Attorney General to add a controlled substance on a

temporary basis to a list wherein manufacturers could be subject to criminal penalties was a proper delegation.

The Court did so, however, noting that the statutes and rules authorizing such a delegation provided meaningful constraints on the Attorney General's discretion to define criminal conduct. In *Touby*, *supra*, at 168, Congress laid down intelligible principles that set forth the scope of agency discretion when it authorized another branch to promulgate regulations that contemplate criminal sanctions.

In the case at issue now before this Court, not only did Congress in Section 315 mandate that no rules were to be promulgated, it also provided no specific authority to prosecute recreationists who fail to pay use fees. (App. 39-42).

Section 315 authorizes the Forest Service to charge fees for selected outdoor recreational areas or sites. The use of the term "selected," as opposed to "any and all" sites, suggests that the LWCFA must be referred to when determining what areas are appropriate for selection. The provisions in the LWCFA prohibit the charging of use fees for roads and define the areas and sites for charging fees. Had the Service harmonized the two provisions governing use and admission fees, it would have the authority to prosecute non-paying persons located in any area properly designated as such pursuant to the criteria in the LWCFA.

Further, with respect to Petitioner's conduct, the LWCFA states that in no event shall there be a charge for, among other things, the use of roads. If that provision has not been repealed and Section 315 is silent on the issue, the Court below, we respectfully submit, erred in concluding that Petitioner was required to pay a fee.

3. THE PANEL DECISION SETS NEW PRECEDENT FOR THE NINTH CIRCUIT AND IS INCONSISTENT WITH ITS OWN PRINCIPLES OF STATUTORY CONSTRUCTION WHEN ANALYZING THE SCOPE OF EXECUTIVE AGENCY POWER.

It appears well-settled within the Ninth Circuit that the general "notwithstanding" phrase should not be construed to impliedly repeal or amend non-conflicting statutes without a thorough analysis of the language of both laws which deal with the same subject matter (i.e., use and admission fees). The Panel decision overlooks any analysis of Ninth Circuit cases that have addressed the "notwithstanding" issue. *See In re Glacier Bay*, *supra*, 944 F.2d 577, 582; *Northwest Forest Resource Council v. Pilchuck Audubon Soc.*, 97 F.3rd 1161, 1166 (9th Cir. 1996); *Moyle v. Director Office of the Workers' Compensation Programs*, 147 F.3rd 1116, 1119 (9th Cir. 1998); *N.L.R.B. v. Kolkka*, 170 F.3d 937, 941 (9th Cir. 1999).

The case most analytically similar to the instant case is *Northwest Forest Resource Council v. Pilchuck Audubon Soc.*, *supra,* 97 F.3d 1161. In *Northwest Forest*, the Ninth Circuit was asked to determine whether or not the "notwithstanding" language in a rescissions act with respect to timber sales impliedly repealed the underlying statutory and regulatory provisions governing the timber sales contracting process. The district court in *Northwest Forest* "simply concluded that the 'notwithstanding' language preempts all regulations that 'obstruct the subsequent statute's objectives.'" The Ninth Circuit concluded that the District Court went "too far." *Id.* at 1166.

In *Northwest Forest*, the Court stated that an implied repeal of the underlying statutory and regulatory provisions

governing the timber sales contracting process may be found only if no other construction was possible. *Supra* at 1167.

Northwest Forest cited *In re Glacier Bay, supra*, for the proposition that the "notwithstanding" language is not dispositive where other laws may have been included by reference. It then held that the rescissions act of section 2001(k)(1) incorporates other laws by referencing the terms "award" and "relief" and "original contract terms" which were not defined in section 2001(k)(1) but were in other regulations which tell the agencies what those words mean.

In the case before this Court, Section 315 includes the words "areas" and "sites," but does not define them. Such words are defined in the substantive provisions of the LWCFA. Since definitions are contained in one provision and not in the other, there is no conflict. Further, Section 315 provides authority to charge fees on selected areas for maintenance of recreational areas on forest lands. Section 315(a) and (b). Hence, even with the "notwithstanding" language, Congress could not confer authority to charge fees on all areas of the forest, only on recreational areas. There was no showing by the Service that Appellant was in a properly-designated recreational area, since it relied solely on the provisions of Section 315, which it interpreted as providing authority for it to charge fees to persons who enter the forest for recreational purposes. Appellant was riding his bike for twenty miles along mountain roads.

As instructed in *Northwest Forest*, another construction of Sec. 315 is possible, so as to avoid constitutional prohibitions pertaining to overbroad delegations. The

Forest Service is free to charge use and admissions fees on more than 21 areas (as many as it wishes), so long as it adheres to the criteria established by Congress for selecting those areas. The Service is also authorized to retain the revenue collected for site-specific activities pursuant to Section 315, notwithstanding any other provision of law.

Placing the emphasis on "notwithstanding any other provision of law" to authorize the Service to retain the revenues "in house" is consistent with provisions found in appropriations measures which generally deal with the allocation of revenue, and which authorize a deviation of how money is to be allocated, and is in accord with the basic purposes and objectives of such measures.

The Ninth Circuit, however, held that Appellant can be prosecuted for failure to pay a fee for recreating, since it reasoned that the Service can charge any fee pursuant to 36 C.F.R. 261.15, and the fee charged was applicable to Dahl's conduct. (App. 5, 6). 36 C.F.R. 216.15 is a use and admission regulation which makes no mention of recreational conduct. The rule was promulgated pursuant to legislative direction in the LWCFA, with the proviso that rules were to be promulgated subject to the express provisions in the LWCFA. (App. 29).

The Forest Service bypassed the provisions in the LWCFA which define and delimit agency discretion, but utilized a rule that was promulgated with those limitations in mind. Had both statutes been harmonized, the Service would be free to charge persons who use recreational areas which were appropriately selected pursuant to the criteria in LWCFA. The Service did not do so, since it argued, and the Courts below agreed, that the LWCFA is

inapplicable and Section 315 provides independent authority to implement a program in all areas of four national forests wherein persons who enter the forest for recreational purposes must pay a fee or be charged for failing to do so.

CONCLUSION

Section 315 authorizes the Forest Service to establish use and admission fees in areas and sites within national forests. It did not authorize it to combine all four national forests in Southern California for the purpose of charging fees to persons, engaged in recreation, who traverse thereon. For the reasons cited herein, we respectfully request this Court grant Appellant's petition for a writ of certiorari

Respectfully submitted,

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. TERRY DAHL, *Defendant-Appellant*.	No. 01-50730 D.C. No. CR-00-00876-CAS-1 ORDER AND OPINION

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted October 9, 2002*
Pasadena, California

Memorandum Filed October 11, 2002
Order Redesignating Memorandum for Publication
Filed December 24, 2002

Before: Stephen Reinhardt, Stephen S. Trott and Barry G. Silverman, Circuit Judges.

Opinion by Judge Silverman

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Sharon K. McCaslin, Assistant United States Attorney, Los Angeles, California, for plaintiff-appellee United States of America.

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* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

ORDER

The request to publish the unpublished Memorandum disposition is granted. The Memorandum disposition filed October 11, 2002, is redesignated as an authored Opinion by Judge Silverman and, as revised, shall be filed as an Opinion.

OPINION

SILVERMAN, Circuit Judge:

I. INTRODUCTION

After receiving numerous notices of non-compliance from the United States Forest Service ("USFS"), Terry Dahl was cited for failure to pay a $5.00 recreational fee discussed further below. He was tried and convicted of violating 36 C.F.R. § 261.15, and ordered to pay a special assessment of $10.00 and restitution of $5.00. On appeal, he challenges USFS's authority to charge a recreational fee on numerous grounds. We have jurisdiction, 28 U.S.C. § 1291, and affirm, but remand for the limited purpose of amending Dahl's judgment of conviction to reflect that his conviction is for an Infraction, and not a Class B Misdemeanor.

II. FACTS

In 1996, Congress enacted the "Recreational Fee Demonstration Program." Pub. L. No. 104-134, § 315, 110 Stat. 1321, 200-02 (codified as amended as a note to 16 U.S.C. § 460*l*-6a) ("Act" or "recreational fee program"). Under the Act, USFS and three other agencies were

required to develop a pilot program to "charge and collect fees for . . . use of outdoor recreation sites." Pub. L. 104-134, § 315(a), (b)(1). Congress instructed USFS to "carry out this section without promulgating regulations," and "[t]he authority to collect fees under this section" was to expire on September 30, 2002. *Id.* § 315(e), (f). Pursuant to the Act, USFS requires vehicles parked for recreational purposes in any of the four Southern California National Forests to display an "Adventure Pass." An Adventure Pass costs $5.00 a day or $30.00 annually.

Dahl, an avid mountain biker, received eleven written warnings in 1998 and 1999 for failing to display an Adventure Pass on his parked vehicle while biking in the Los Padres National Forest in Southern California. On October 24, 1999, while Dahl was biking in the Los Padres National Forest, he received a citation for violation of 36 C.F.R. § 261.15 for failure to pay a required fee.[1] Dahl claimed he was not required to pay any fee. The government filed an information charging him with violation of 36 C.F.R. § 261.15. Dahl was tried and found guilty of a Class B misdemeanor. The district court sentenced Dahl to pay a special assessment of $10.00 and restitution to USFS of $5.00. He appeals.

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[1] 36 C.F.R. § 261.15 provides: "Failing to pay any fee established for admission or entrance to or use of a site, facility, equipment or service furnished by the United States is prohibited. The maximum fine shall not exceed $100."

III. STANDARD OF REVIEW

Construction and interpretation of statutes, civil and criminal, are reviewed de novo. *Boeing Co. v. Cascade Corp.*, 207 F.3d 1177, 1182 (9th Cir. 2000); *United States v. Kakatin*, 214 F.3d 1049, 1051 (9th Cir. 2000).

IV. DISCUSSION

Dahl first argues that USFS's decision to designate all four National Forests in Southern California "as one area for purposes of implementing its program" "appears contrary on its face to Congressional intent." However, Dahl provides no support for the fact that all four Southern California forests are not one "area," or why, if they are not, this is contrary to the intent of Congress.

Dahl next contends that there is a conflict between the recreational fee program established by Pub. L. 104-134, § 315(b) and 16 U.S.C. § 460*l*-6a because "the conduct of riding a bike on forest roads is permissible under [Section 460*l*-6a]." Dahl takes the position that "Section 315, from which the 'Adventure Pass' policy sprang, cannot be construed to override [Section 460*l*-6a]."

There is no conflict. The Act and 16 U.S.C. § 460*l*-6a are distinct provisions. The Act's recreational fee program was enacted "notwithstanding any other" legislation. Pub. L. 104-134, § 315(b).[2] There is no limitation in the Act

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[2] In relevant part, § 315(b) provides:

For each such demonstration, the Secretary, notwithstanding any other provision of law –

(Continued on following page)

restricting recreational fees to the 21 areas of concentrated public use addressed in 16 U.S.C. § 460*l*-6a nor do any of the other criteria in that section apply to the Act's recreational fee program. We read the language allowing USFS to collect fees "notwithstanding any other provision of law" to mean just what it says – that the Act's recreational fee program is not subject to the constraints of other laws, including those of 16 U.S.C. § 460*l*-6a.

Dahl contends that the Act effects an amendment or implied repeal of 16 U.S.C. § 460*l*-6a because the fees imposed under the Act were not imposed in accordance with 16 U.S.C. § 460*l*-6a. This argument fails. Amendment or repeal by implication may only be found where legislative intent is clear and manifest. *Posadas v. National City Bank,* 296 U.S. 497, 503 (1936). We find no clear and manifest legislative intent supporting Dahl's argument that Congress intended the area selection requirements of 16 U.S.C. § 460*l*-6a(a) to apply to the Act's recreational fee program.

Dahl argues in the alternative that, if 16 U.S.C. § 460*l*-6a and Section 315(b) are separate and distinct provisions, he cannot be prosecuted for violation of 36 C.F.R. § 261.15 because this regulation was enacted pursuant to 16 U.S.C. § 460*l*-6a. We disagree. 36 C.F.R. § 261.15 prescribes a penalty for "[f]ailing to pay *any* fee established for admission or entrance" to a Forest Service

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(1) shall charge and collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services. . . .

site or facility. *Id.* (emphasis added). It is applicable to Dahl's conduct.

Dahl raises two additional arguments addressing improper delegation and vagueness. First, he asserts that Congress provided the USFS with no guidelines and entrusted it with too much discretion, especially in light of the program's ban on rulemaking. Pub. L. No. 104-134, § 315(e). In light of the detailed language governing how the program is to operate, we find clear principles set forth to guide the USFS and no impermissible delegation of power. *See Whitman v. American Trucking Assocs.*, 531 U.S. 457, 472-76 (2001) (noting that Congress delegates constitutionally when it "lay[s] down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform.") (quoting *J.W. Hampton, Jr., & Co. v. United States,* 276 U.S. 394, 409 (1928)).

Second, Dahl argues that his conviction is invalid because the term "recreation" is unconstitutionally vague. We disagree. The term "recreation," especially as applied to mountain biking, is by no means "so vague and standardless that it leaves the public uncertain as to" what is prohibited. *City of Chicago v. Morales,* 527 U.S. 41, 56 (1999) (quoting *Giaccio v. Pennsylvania,* 382 U.S. 399, 402-403 (1966)). It therefore does not offend due process.

Dahl advances one final argument that has merit. He contends that he cannot be convicted of a Class B Misdemeanor. We agree. Dahl was convicted under 36 C.F.R. § 261.15. The regulation's enabling statute, 16 U.S.C. § 460*l*-6a(e), specifies that "violations of the rules and regulations issued under this subsection shall be punishable by a fine of not more than $100." Consistent with the enabling statute, Section 261.15 provides *only* for a fine up

to $100. An offense for which no imprisonment is authorized is classified as an Infraction. 18 U.S.C. § 3559(a)(9). Consequently, Dahl is correct that he could only be convicted of an Infraction, and not a Class B Misdemeanor. We therefore remand for the limited purpose of directing the district court to amend the judgment to reflect a conviction for an Infraction, and not a Class B Misdemeanor.

AFFIRMED in part and REMANDED in part.

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.		**Docket No. CR-**	**00-876-CAS**
Defendant	**Terry Dahl**		
akas:		**Social Security No.**	NOT DISCLOSED
& Residence Address	NOT DISCLOSED	**Mailing Address**	NOT DISCLOSED

JUDGMENT AND PROBATION/ COMMITMENT ORDER

MONTH	DAY	YEAR
12	03	2001

In the presence of the attorney for the government, the defendant appeared in person on this date

COUNSEL	[ ] **WITH** [X] **COUNSEL**	GREGORY REDEN, RET. 1900 Sunset Dr., #D Escondido, CA 92025 (Name of Counsel)	

PLEA	☐ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO CONTENDRE** ☒ **NOT GUILTY**
FINDING	There being a finding/verdict of ☒ **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Failure to pay fine for admission or entrance to or use of a site, facility, equipment or service furnished by the United States in violation of 36 C.F.R. §§ 261.15, and 261.1b. (Class B misdemeanor)

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant

Shall pay to the United States a special assessment of $10. Further defendant shall pay Restitution in the amount of $5 to the U.S. Forest Service.

Signed by: United States District Judge

/s/ Christina A. Snyder
Christina A. Snyder

It is ordered that the Clerk deliver a certified copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Sherri R. Carter, Clerk

Dated/Filed 12/18/01 **By** /s/ Maynor R. Galvez
Maynor Galvez, Deputy Clerk

Mary Ellen Barilotti, Esq. State Bar No. 112549
Post Office Box 635
Los Olivos, CA. 93441

Telephone: (805) 686-4182
Facsimile: (805) 693-5811

Appearing for Defendant
Terry Dahl

United States District Court

For The Central District of California

UNITED STATES OF AMERICA, Plaintiffs, v. TERRY DAHL, Defendant.	Case No. CR 00-876 CAS NOTICE OF APPEAL (FRAP Rule 3(a)(1)) (Filed Dec. 13, 2001)

TO THE CLERK OF THE COURT and to the United States Attorney, notice is hereby given that *TERRY DAHL*, defendant in the above-named case, hereby appeals to the United States Court of Appeal for the Ninth Circuit from the judgment order entered in this action December 3rd, 2001.

DATED: December 6th, 2001.

MARY ELLEN BARILOTTI

/s/ Mary Ellen Barilotti
Mary Ellen Barilotti
Attorney for Defendant
and Appellant Terry Dahl

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. TERRY DAHL, Defendant.	CASE NO. CR 00-876-CAS **ORDER** (Filed Feb. 2, 2001)

This matter was tried to the Court on January 9, 2001. Sharon McCaslin appeared for the United States, and Gregory S. Reden and Mary Ellen Barilotti appeared for defendant, Terry Dahl.

Defendant is charged with violating 36 C.F.R. § 261.15 which provides:

> Failing to pay any fee established for admission or entrance to or use of a site, facility, equipment or service furnished by the United States is prohibited. The maximum fine shall not exceed $100.

Violations of 36 C.F.R. § 261 are punishable by a maximum prison term of not more than six months, a fine, or both. 36 C.F.R. § 261.1(b), 16 U.S.C. § 551. The violation alleged is a class B misdemeanor.[1]

[1] November 27, 2000, the Court denied defendant's motion to dismiss the indictment.

This case arises from defendant's refusal to purchase and display a recreation pass known as an "Adventure Pass" when mountain biking in the Los Padres National Forest. The pass was required after Congress enacted Public Law 104-134, § 315; 110 Stat. 1321 ("Public Law 104-134"), legislation which required several agencies, including, but not limited to, the United States Forest Service, to collect recreational fees at several designated sites. The stated purpose of Public Law 104-134 was to study, through charging recreational fees at various sites, the feasibility of requiring users of recreational facilities to share the costs of the operation and maintenance of the areas they used. Among the sites selected for the feasibility study were the four Southern California National Forests which included, among others, the Los Padres National Forest. The fee for the recreation pass is $5.00 per day or $30.00 per year. Persons who drive to the forests for purposes of recreating must display the recreation pass on their parked vehicles.

Defendant is an avid mountain biker who received written warnings on eleven occasions in 1998 and 1999 for failure to display a recreation pass on his vehicle when parked at a parking lot at the Los Padres National Forest. The warning notices stated that the operator of the vehicle was required to display a recreation pass or to submit a written basis for being exempt from the recreation pass requirement.

After issuing eleven warnings to defendant, a park official determined from a conversation with defendant on October 24, 1999, that defendant had ridden his bike on the trails of the Los Padres National Forest on that day. The Forest Service thereafter issued defendant a notice of violation. Defendant, who is a member of a recreation fee

protest group, thereafter met with Forest Service officials with his lawyer. At the meeting, defendant first claimed that he was immune from prosecution under the First Amendment to the United States Constitution because he was a [sic] protesting the recreation fee.

Defendant now asserts, *inter alia*, that he did not purchase an Adventure Pass in reliance on a February 5, 1999 letter from Jeanine Derby of the Forest Service to John Edkins of Free Our Forests. The letter provides, in pertinent part, as follows:

> Individuals are not required to obtain authorization from the Forest Service to exercise their First Amendment Rights concerning the recreation fee within a national forest. Forest Officers have been advised that if a forest visitor is expressing their opinion or distributing information about the Adventure Pass, a notice of noncompliance should not be issued. If, however, the Forest Officer believes that the purpose of the visit to the forest is recreational in nature, the Adventure Pass is required.

The record is undisputed that defendant at no time sought to be exempt from purchasing an Adventure Pass because he intended to engage in a protest.

At trial, the United States argued that defendant is guilty of violating 36 C.F.R. § 261.15, based on his refusal to obtain an Adventure Pass or, in the alternative, his failure to seek exemption as required by the warning notices. Because § 261.15 is a public welfare offense and does not have a *mens rea* requirement, it is a strict liability offense and the government is not required to prove that defendant's conduct was knowing and willful. *See*

United States v. Wilson, 438 U.S. 529 (1971); *United States v. Kent*, 945 F.2d 1441, 1445-46 (9th Cir. 1991).

Defendant responded that he is immune from prosecution because he was exercising his First Amendment rights, and that he was not required to explain the basis for a claimed exemption after he received the warning notices.

As a preliminary matter, it is well settled that in order to establish a claim that a criminal prosecution may abridge the defendant's First Amendment rights, the defendant must first establish that he was exercising First Amendment rights. Here, the undisputed evidence is that defendant rides the bike trails of the National Forest without paying the required fees because he believes the government does not have the right to charge any such fees. The government argues that so long as defendant uses the bike trails, he is required to pay the fee. In *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984), petitioners challenged a regulation of the National Park Service that prohibited camping in certain parks as a violation of the First Amendment when applied to prohibit demonstrators from sleeping in a park to call attention to the plight of the homeless. In reversing the decision of the Court of Appeals, the Supreme Court held that application of the regulation did not violate the First Amendment. In so ruling, the Supreme Court noted that in order to be valid, such regulations must (1) meet reasonable time, place and manner restrictions; (2) be justified without reference to the content of the regulated speech; (3) be narrowly tailored to serve a significant government interest; and (4) leave open for ample alternative channels for communication of the information It appears that Public Law 104-134 can withstand scrutiny on all these

grounds. The fee applies to those who drive vehicles to the park for recreational purposes. This cannot be said to be an unreasonable time, place or manner restriction. Further, there is no evidence that the regulation is not content neutral. The recreation fee is charged as to all persons who recreate whether or not they support the Adventure Pass fee. Persons who wish to protest the fee are admitted free of charge so long as they do not use the forest for recreational purposes. The regulation also focuses on the government's substantial interest in maintaining the parks. Finally, the regulation leaves open ample alternative channels for communication. Indeed, the Jeanine Derby letter makes clear that persons who protest the fee and are not recreating should not receive a notice of noncompliance. In these circumstances, it appears that defendant cannot show that the enactment as applied in this case violates his First Amendment rights.

Defendant next argues that the Pilot Fee Demonstration program authorized by Public Law 104-134 must be harmonized under the Land and Water Conservation Fund Act of 1965, Pub.L. 88-578 (codified as amended at 16 U.S.C. § 460*l*-4 *et seq.*) ("LWCFA"). Defendant argues that when viewed in the context of LWCFA, the Adventure Pass program fails to meet the general requirements of LWCFA in a variety of ways, including at least the following: (1) the Adventure Pass program is overly broad and requires that fees be paid for protected activity; (2) the Adventure Pass impermissibly charges for parking on state and county roads and for the use of scenic highways, state-owned facilities and other exempt areas; (3) the Adventure Pass program fails to notify the public that the fee is only required for those who park for recreational

purposes; (4) Public Law 104-134 fails to define "recreating" and is therefore impermissibly vague; (5) the fee cannot be collected at a centralized area convenient to the public; and (6) the majority of land designated under the Adventure Pass program is not managed primarily for recreational purposes nor are recreational funds used to manage these areas.

The government responds that there is no conflict between Public Law 104-134 and LWCFA, in that Public Law 104-134 provides that "notwithstanding any other provision of law," the recreation fee shall be collected. Pub.L. 104-134, § 315(b). Based upon the above language, it appears that the government's construction is correct.

Moreover, defendant offers no evidentiary support for his interpretation of the LWCFA. Hence, insofar as defendant argues that the Adventure Pass is being required for use of non-recreational areas, that argument – even if correct – is not relevant to this case. The evidence shows that on October 24, 1999, the day at issue, defendant was observed by Park Ranger Larry Griffith to be leaving the forest in a biking outfit, and that defendant told Mr. Griffith that he had been riding his bicycle in the forest.

Defendant also makes an effort to assert an equal protection argument to the effect that others are permitted to ride the trails without having to pay the fee.[2] The

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[2] Of course, there is no Equal Protection clause applicable to the federal government. However, in *Bolling v. Sharpe*, 347 U.S. 497 (1954), the Supreme Court held that it would be "unthinkable" that the Fifth Amendment to the United States Constitution did not provide rights against the United States coextensive with the Equal Protection clause.

evidence at trial, however, demonstrated that such individuals are allowed on the bike trails to assist in the maintenance of the trails, and in consideration thereof, are allowed to recreate on the day they perform such services without paying for a recreation pass.

Defendant next asserts that Public Law 104-134 is an appropriations bill which does not provide appropriate standards or proper notice for prosecuting those who violate its terms. Accordingly, defendant argues that if defendant may be prosecuted criminally, the Executive Branch, not Congress, is defining criminal conduct. This, defendant contends, is prohibited because the Executive Branch may not create new crimes citing, *State of South Dakota v. Department of Interior*, 69 F.3d 878 (8th Cir. 1995).

Defendant's argument appears to blur several notions. First, Public Law 104-134 is an enactment by Congress. It requires the Forest Service to designate test sites where fees are to be collected. Nothing prevents the Forest Service from treating the four selected Southern California forests in the same manner. Further, in establishing the recreation fee demonstration program, Congress stated that "[t]he Secretary of Agriculture shall carry out this section without promulgating regulations." Public Law 104-134, § 315(e).

Finally, defendant contends that he cannot be prosecuted under 36 C.F.R. § 261.1b because 36 C.F.R. § 261.5 provides for a maximum fine of $100. Section 261.1b provides as follows:

> Any violation of the prohibitions of this Part (261) shall be punished by a fine of not more than $500 or imprisonment for not more than six

> months pursuant to Title 16 U.S. Code Section 551, unless otherwise provided.

Defendant argues that because § 261.15 provides for a $100 fine, that section provides for a penalty that is different from the punishment set forth in § 261.1b. He therefore asserts that he did not have notice that his failure to pay the recreational fee could subject him to a criminal prosecution. The government responds that § 261.1b provides the penalty for violating the prohibitions contained in Part 261 of which § 261.15 is a part, and that, in contrast to LWCFA, § 261.15 does not provide that a violation "shall be punished" by only a $100 fine. The government argues that the language of the regulation therefore demonstrates that the penalties set forth in § 261.1b are in addition to the fine provided for in § 261.15.

The Court agrees with the government's analysis. It appears from the plain language of § 261.1b that it is intended to punish violators of so-called "261 Prohibitions." The prohibition contained in § 261.15 is among the so-called "261 Prohibitions." Further § 261.1b appears to have been added in response to a comment that the penalty section of 16 U.S.C. § 551 should be reprinted "so the public would be better informed as to the consequences of violating part 261, Prohibitions," 46 Fed. Reg. 33518, June 30, 1981.

For the foregoing reasons, the Court finds that a violation of § 261.15 may be prosecuted as a Class B misdemeanor pursuant to § 261.1b.

The Court therefore finds and concludes that the defendant is guilty of the charge that he violated 36 C.F.R. §§ 261.15 and 261.1b.

IT IS SO ORDERED.

DATED: January 31, 2001

/s/ Christina A. Snyder
CHRISTINA A. SNYDER
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TERRY DAHL, Defendant-Appellant.	No. 01-50730 D.C. No. CR-00-00876-CAS-1 Central District of California, Los Angeles ORDER (Filed Jan. 29, 2003)

Before: REINHARDT, TROTT and SILVERMAN, Circuit Judges.

The panel has voted to reject appellant's petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is rejected.

16 U.S.C. Sec. 4601-**6a**. Admission and special recreation use fees

(a) Admission fees at designated areas; "Golden Eagle Passport" annual admission permit; single-visit fees; fee-free travel areas; "Golden Age Passport" annual entrance permit; lifetime admission permit

Entrance or admission fees shall be charged only at designated units of the National Park System or National Conservation Areas administered by the Department of the Interior and National Recreation Areas, National Monuments, National Volcanic Monuments, National Scenic Areas, and no more than 21 areas of concentrated public use administered by the Department of Agriculture. For purposes of this subsection, the term "area of concentrated public use" means an area that is managed primarily for outdoor recreation purposes, contains at least one major recreation attraction, where facilities and services necessary to accommodate heavy public use are provided, and public access to the area is provided in such a manner that admission fees can be efficiently collected at one or more centralized locations. No admission fees of any kind shall be charged or imposed for entrance into any other federally owned areas which are operated and maintained by a Federal agency and used for outdoor recreation purposes.

(1)(A)(i) For admission into any such designated area, an annual admission permit (to be known as the Golden Eagle Passport) shall be available, for a fee of not more than $25. The permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse, children, and parents accompanying him where entry to the area is by any means other than private, noncommercial vehicle,

shall be entitled to general admission into any area designated pursuant to this subsection. The annual permit shall be valid for a period of 12 months from the date the annual fee is paid. The annual permit shall not authorize any uses for which additional fees are charged pursuant to subsections (b) and (c) of this section. The annual permit shall be nontransferable and the unlawful use thereof shall be punishable in accordance with regulations established pursuant to subsection (e) of this section. The annual permit shall be available for purchase at any such designated area.

(ii) The Secretary of the Interior and the Secretary of Agriculture may authorize businesses, nonprofit entities, and other organizations to sell and collect fees for the Golden Eagle Passport subject to such terms and conditions as the Secretaries may jointly prescribe. The Secretaries shall develop detailed guidelines for promotional advertising of non-Federal Golden Eagle Passport sales and shall monitor compliance with such guidelines. The Secretaries may authorize the sellers to withhold amounts up to, but not exceeding 8 percent of the gross fees collected from the sale of such passports as reimbursement for actual expenses of the sales. Receipts from such non-Federal sales of the Golden Eagle Passport shall be deposited into the special account established in subsection (i) of this section, to be allocated between the Secretary of the Interior and the Secretary of Agriculture in the same ratio as receipts from admission into Federal fee areas administered by the Secretary of Agriculture and the Secretary of the Interior pursuant to subsection (a) of this section.

(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Secretary is

authorized to make available an annual admission permit for a reasonable fee. The fee shall not exceed $15 regardless of how many units of the park system are covered. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the National Park System indicated at the time of purchase.

(2) Reasonable admission fees for a single visit at any designated area shall be established by the administering Secretary for persons who choose not to purchase the annual permit. A "single visit" means a more or less continuous stay within a designated area. Payment of a single visit admission fee shall authorize exits from and reentries to a single designated area for a period of from one to fifteen days, such period to be defined for each designated area by the administering Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit. The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than $5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The fee for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than $3 per person. Except as otherwise provided in this subsection, the maximum fee amounts set forth in this paragraph shall apply to all designated areas.

(3) No admission fee shall be charged for travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the

National Federal Aid System, as defined in section 101 of title 23, which is commonly used by the public as a means of travel between two places either or both of which are outside the area. Nor shall any fee be charged for travel by private, noncommercial vehicle over any road or highway to any land in which such person has any property right if such land is within any such designated area. In the Smoky Mountains National Park, unless fees are charged for entrance into said park on main highways and thoroughfares, fees shall not be charged for entrance on other routes into said park or any part thereof. Notwithstanding any other provision of this part, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations.

(4) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit (to be known as the "Golden Age Passport") to any citizen of, or person domiciled in, the United States sixty-two years of age or older applying for such permit. Such permit shall be nontransferable, shall be issued for a one-time charge of $10, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection. No other free permits shall be issued to any person: Provided, That no fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of

law or treaty or who are engaged in the conduct of official Federal, State, or local Government business and Provided further, That for no more than three years after the date of enactment of this Act, visitors to the United States will be granted entrance, without charge, to any designated admission fee area upon presentation of a valid passport.

(5) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, if such citizen or person applies for such permit, and is blind or permanently disabled. Such procedures shall assure that such permit shall be issued only to persons who have been medically determined to be blind or permanently disabled for purposes of receiving benefits under Federal law as a result of said blindness or permanent disability as determined by the Secretaries. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection.

(6)(A) No later than 60 days after December 22, 1987, the Secretary of the Interior shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report on the entrance fees proposed to be charged at units of the National Park System. The report shall include a list of units of the National Park System and the entrance fee proposed to be charged at each unit.

The Secretary of the Interior shall include in the report an explanation of the guidelines used in applying the criteria in subsection (d) of this section.

(B) Following submittal of the report to the respective committees, any proposed changes to matters covered in the report, including the addition or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after notice of the proposed change has been submitted to the committees.

(7) No admission fee may be charged at any unit of the National Park System for admission of any person 16 years of age or less.

(8) No admission fee may be charged at any unit of the National Park System for admission of organized school groups or outings conducted for educational purposes by schools or other bona fide educational institutions.

(9) No admission fee may be charged at the following units of the National Park System: U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, Arlington House – Robert E. Lee National Memorial, San Juan National Historic Site, and Canaveral National Seashore.

(10) For each unit of the National Park System where an admission fee is collected, the Director shall annually designate at least one day during periods of high visitation as a "Fee-Free Day" when no admission fee shall be charged.

(11) In the case of the following parks, the fee for a single-visit permit applicable to those persons entering by

private, noncommercial vehicle (the permittee and all persons accompanying him in a single vehicle) shall be no more than $10 per vehicle and the fee for a single-visit permit applicable to persons entering by any means other than a private noncommercial vehicle shall be no more than $5 per person: Yellowstone National Park and Grand Teton National Park and after the end of fiscal year 1990, Grand Canyon National Park. In the case of Yellowstone and Grand Teton, a single-visit fee collected at one unit shall also admit the vehicle or person who paid such fee for a single-visit to the other unit.

(12) Notwithstanding section 410hh-2 of this title, the Secretary may charge an admission fee under this section at Denali National Park and Preserve in Alaska.

(b) Recreation use fees; collection; campgrounds at lakes or reservoirs under jurisdiction of Corps of Engineers; fees for Golden Age Passport permittees

Each Federal agency developing, administering, providing or furnishing at Federal expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: Provided, That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, or toilet facilities, nor shall there be any such charge solely for the use of picnic tables: Provided, That in no event shall there be a charge for the use of any campground not having a majority of the following: tent or trailer spaces, picnic tables, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an

employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). For the purposes of this subsection, the term "specialized outdoor recreation sites" includes, but is not limited to, campgrounds, swimming sites, boat launch facilities, and managed parking lots. Any Golden Age Passport permittee, or permittee under paragraph (5) of subsection (a) of this section, shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

(c) Special recreation permits

Special recreation permits for uses such as group activities, recreation events, motorized recreation vehicles, and other specialized recreation uses may be issued in accordance with procedures and at fees established by the agency involved.

(d) Criteria, posting and uniformity of fees

All fees established pursuant to this section shall be fair and equitable, taking into consideration the direct and indirect cost to the Government, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by non-Federal public agencies, the economic and administrative feasibility of fee collection and other pertinent factors.

Clear notice that a fee has been established pursuant to this section shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas. It is the intent of this part that comparable fees should be charged by the

several Federal agencies for comparable services and facilities.

(e) Rules and regulations; establishment; enforcement powers; penalty for violations

In accordance with the provisions of this section, the heads of appropriate departments and agencies may prescribe rules and regulations for areas under their administration for the collection of any fee established pursuant to this section. Persons authorized by the heads of such Federal agencies to enforce any such rules or regulations issued under this subsection may, within areas under the administration or authority of such agency head and with or, if the offense is committed in his presence, without a warrant, arrest any person who violates such rules and regulations. Any person so arrested may be tried and sentenced by the United States magistrate judge specifically designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in subsections (b), (c), (d), and (e) of section 3401 of title 18. Any violations of the rules and regulations issued under this subsection shall be punishable by a fine of not more than $100.

(f) Contracts with public or private entities for visitor reservation services

The head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services. Any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged the

public for providing such services and to remit the net proceeds therefrom to the contracting agency.

(g) Federal and State laws unaffected

Nothing in this part shall authorize Federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, nor shall it affect any rights or authority of the States with respect to fish and wildlife, nor shall it repeal or modify any provision of law that permits States or political subdivisions to share in the revenues from Federal lands or any provision of law that provides that any fees or charges collected at particular Federal areas shall be used for or credited to specific purposes or special funds as authorized by that provision of law.

(h) Repealed. Pub. L. 104-66, title I, Sec. 1081(f), Dec. 21, 1995, 109 Stet. 721

(i) Covering of fees collected into special account for agency established in Treasury; covered agencies; availability of funds; allocation of National Park Service funds

(1)(A) Except in the case of fees collected by the United States Fish and Wildlife Service or the Tennessee Valley Authority, all receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. Fees collected by the Secretary of Agriculture pursuant to this subsection shall continue to be available for the purposes of distribution to States and counties in accordance with applicable law.

(B) Notwithstanding subparagraph (A), in any fiscal year, the Secretary of Agriculture and the Secretary of the Interior may withhold from the special account established under subparagraph (A) such portion of all receipts collected from fees imposed under this section in such fiscal year as the Secretary of Agriculture or the Secretary of the Interior, as appropriate, determines to be equal to the fee collection costs for that fiscal year: Provided, That such costs shall not exceed 15 percent of all receipts collected from fees imposed under this section in that fiscal year. The amounts so withheld shall be retained by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, and shall be available, without further appropriation, for expenditure by the Secretary concerned to cover fee collection costs in that fiscal year. The secretary concerned shall deposit into the special account established pursuant to subparagraph (A) any amounts so retained which remain unexpended and unobligated at the end of the fiscal year. For the purposes of this subparagraph, for any fiscal year, the term "fee collection costs" means those costs for personnel and infrastructure directly associated with the collection of fees imposed under this section.

(C) Units at which entrance fees or admissions fees cannot be collected. –

(i) Withholding of amounts. – Notwithstanding subparagraph (A), section 315(c) of section 101(c) of the Omnibus Consolidated Recessions and Appropriations Act of 1996 (16 U.S.C. 4601-**6a** note; Public Law 104-134), or section 107 of the Department of the Interior and Related Agencies Appropriations Act, 1998 (16 U.S.C. 4601-**6a** note; Public Law 105-83), the Secretary of the Interior shall withhold from the

special account under subparagraph (A) 100 percent of the fees and charges collected in connection with any unit of the National Park System at which entrance fees or admission fees cannot be collected by reason of deed restrictions.

(ii) Use of amounts. – Amounts withheld under clause (i) shall be retained by the Secretary and shall be available, without further Act of appropriation, for expenditure by the Secretary for the unit with respect to which the amounts were collected for the purposes of enhancing the quality of the visitor experience, protection of resources, repair and maintenance, interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement.

(2) Amounts covered into the special account for each agency during each fiscal year shall, after the end of such fiscal year, be available for appropriation solely for the purposes and in the manner provided in this subsection. No funds shall be transferred from fee receipts made available under this part to each unit of the national park system:[1] Provided, however, That in making appropriations, funds derived from such fees may be used for any purpose authorized therein. Funds credited to the special account shall remain available until expended.

(3) For agencies other than the National Park Service, such funds shall be made available for resource protection, research, interpretation, and maintenance

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[1] So in original. Probably should be "National Park System:".

activities related to resource protection in areas managed by that agency at which outdoor recreation is available. To the extent feasible, such funds should be used for purposes (as provided for in this paragraph) which are directly related to the activities which generated the funds, including but not limited to water-based recreational activities and camping.

(4) Amounts covered into the special account for the National Park Service shall be allocated among park system units in accordance with subsection (j) of this section for obligation or expenditure by the Director of the National Park Service for the following purposes:

(A) In the case of receipts from the collection of admission fees: for resource protection, research, and interpretation at units of the National Park System.

(B) In the case of receipts from the collection of user fees: for resource protection, research, interpretation, and maintenance activities related to resource protection at units of the National System.

(j) Funds available to National Park Service; required allocations; computations; unexpended funds

(1) 10 percent of the funds made available to the Director of the National Park Service under subsection (i) of this section in each fiscal year shall be allocated among units of the National Park System on the basis of need in a manner to be determined by the Director.

(2) 40 percent of the funds made available to the Director of the National Park Service under subsection (i) of this section in each fiscal year shall be allocated among units of the National Park System in accordance with

paragraph (3) of this subsection and 50 percent shall be allocated in accordance with paragraph (4) of this subsection.

(3) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the operating expenses at that unit during the prior fiscal year by the total operating expenses at all units during the prior fiscal year.

(4) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the user fees and admission fees collected under this section at that unit during the prior fiscal year by the total of user fees and admission fees collected under this section at all units during the prior fiscal year.

(5) Amounts allocated under this subsection to any unit for any fiscal year and not expended in that fiscal year shall remain available for expenditure at that unit until expended.

(k) Selling of permits and collection of fees by volunteers at designated areas; collecting agency duties; surety bonds; selling of annual admission permits by public and private entities under arrangements with collecting agency head

When authorized by the head of the collecting agency, volunteers at designated areas may sell permits and collect fees authorized or established pursuant to this section. The head of such agency shall ensure that such volunteers have adequate training regarding –

(1) the sale of permits and the collection of fees,

(2) the purposes and resources of the areas in which they are assigned, and

(3) the provision of assistance and information to visitors to the designated area.

The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale.

(l) Charge for transportation provided by National Park Service for viewing National Park System units; charge in lieu of admission fee; maximum charge; apportionment and expenditure of charges

(1) Where the National Park Service provides transportation to view all or a portion of any unit of the National Park System, the Director may impose a charge for such service in lieu of an admission fee under this section. The charge imposed under this paragraph shall not exceed the maximum admission fee under subsection (a) of this section.

(2) Notwithstanding any other provision of law, half of the charges imposed under paragraph (1) shall be

retained by the unit of the National Park System at which the service was provided. The remainder shall be covered into the special account referred to in subsection (i) of this section in the same manner as receipts from fees collected pursuant to this section. Fifty percent of the amount retained shall be expended only for maintenance of transportation systems at the unit where the charge was imposed. The remaining 50 percent of the retained amount shall be expended only for activities related to resource protection at such units.

(m) Admission fee at National Park System units where primary public access is provided by concessioner; maximum fee

Where the primary public access to a unit of the National Park System is provided by a concessioner, the Secretary may charge an admission fee at such units only to the extent that the total of the fee charged by the concessioner for access to the unit and the admission fee does not exceed the maximum amount of the admission fee which could otherwise be imposed under subsection (a) of this section.

(n) Commercial tour use fees

(1) In the case of each unit of the National Park System for which an admission fee is charged under this section, the Secretary of the Interior shall establish, by October 1, 1993, a commercial tour use fee to be imposed on each vehicle entering the unit for the purpose of providing commercial tour services within the unit. Fee revenue derived from such commercial tour use fees shall be deposited into the special account established under subsection (i) of this section.

(2) The Secretary shall establish the amount of fee per entry as follows:

(A) $25 per vehicle with a passenger capacity of 25 persons or less, and

(B) $50 per vehicle with a passenger capacity of more than 25 persons.

(3) The Secretary may periodically make reasonable adjustments to the commercial tour use fee imposed under this subsection.

(4) The commercial tour use fee imposed under this subsection shall not apply to either of the following:

(A) Any vehicle transporting organized school groups or outings conducted for educational purposes by schools or other bona fide educational institutions.

(B) Any vehicle entering a park system unit pursuant to a contract issued under the Act of October 9, 1965 (16 U.S.C. 20-20g) entitled "An Act relating to the establishment of concession policies in the areas administered by the National Park Service and for other purposes."

(5)(A) The provisions of this subsection shall apply to aircraft entering the airspace of units of the National Park System identified in section 2(b) and section 3 of Public Law 100-91 for the specific purpose of providing commercial tour services within the airspace of such units. (B) The provisions of this subsection shall also apply to aircraft entering the airspace of other units of the National Park System for the specific purpose of providing commercial tour services if the Secretary determines that the level of such services is equal to or greater than the level at those

units of the National Park System specified in subparagraph (A).

Pub. L. 104-134, title I, Sec. 101(c) [title III, Sec. 315], Apr. 26, 1996, 110 Stat. 1321-156, 1321-200; renumbered title I, Pub. L. 104-140, Sec. 1(a), May 2, 1996, 110 Stat. 1327, as amended by Pub. L. 104-208, div. A. title I, Sec. 101(d) [title I, title III, Sec. 319], Sept. 30, 1996, 110 Stat. 3009-181, 3009-187, 3009-223; Pub. L. 105-18, title II, Sec. 5001, June 12, 1997, 111 Stat. 181; Pub. L. 105-83, title III, Sec. 320, Nov. 14, 1997, 111 Stat. 1596; Pub. L. 105-277, div. A, Sec. 101(e) [title III, Sec. 327], Oct. 21, 1998, 112 Stat. 2681-231, 2681-291; Pub. L. 106-291, title III, Sec. 336, Oct. 11, 2000, 114 Stat. 997, provided that:

"(a) The Secretary of the Interior (acting through the Bureau of Land Management, the National Park Service and the United States Fish and Wildlife Service) and the Secretary of Agriculture (acting through the Forest Service) shall each implement a fee program to demonstrate the feasibility of user-generated cost recovery for the operation and maintenance of recreation areas or sites and habitat enhancement projects on Federal lands.

"(b) In carrying out the pilot program established pursuant to this section, the appropriate Secretary shall select from areas under the jurisdiction of each of the four agencies referred to in subsection (a) no fewer than 10, but as many as 100, areas, sites or projects for fee demonstration. For each such demonstration, the Secretary, notwithstanding any other provision of law –

> "(1) shall charge and collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment,

and services by individuals and groups, or any combination thereof;

"(2) shall establish fees under this section based upon a variety of cost recovery and fair market valuation methods to provide a broad basis for feasibility testing;

"(3) may contract, including provisions for reasonable commissions, with any public or private entity to provide visitor services, including reservations and information, and may accept services of volunteers to collect fees charged pursuant to paragraph (1);

"(4) may encourage private investment and partnerships to enhance the delivery of quality customer services and resource enhancement, and provide appropriate recognition to such partners or investors; and

"(5) may assess a fine of not more than $100 for any violation of the authority to collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services.

"(c)(1) Amounts collected at each fee demonstration area, site or project shall be distributed as follows:

"(A) Eighty percent to a special account in the Treasury for use without further appropriation, by the agency which administers the site, to remain available for expenditure in accordance with paragraph (2)(A).

"(B) Twenty percent to a special account in the Treasury for use without further appropriation, by the agency which administers the site, to

remain available for expenditure in accordance with paragraph (2)(B).

"(C) For agencies other than the Fish and Wildlife Service and the National Park Service, up to 15% of current year collections of each agency, but not greater than fee collection costs for that fiscal year, to remain available for expenditure without further appropriation in accordance with paragraph (2)(C).

"(D) For agencies other than the Fish and Wildlife Service, the balance to the special account established pursuant to subparagraph (A) of section 4(i)(1) of the Land and Water Conservation Fund Act [16 U.S.C. 4601-**6a**(i)(1)(A)], as amended.

"(E) For the Fish and Wildlife Service, the balance shall be available to the Secretary of the Interior until expended to be used in accordance with clauses (i), (ii), and (iii) of section 201(c)(A) of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911(c)(A)).

"(2)(A) Expenditures from site specific special funds shall be for further activities of the area, site or project from which funds are collected, and shall be accounted for separately.

"(B) Expenditures from agency specific special funds shall be for use on an agency-wide basis and shall be accounted for separately.

"(C) Expenditures from the fee collection support fund shall be used to cover fee collection costs in accordance with section 4(i)(1)(B) of the Land and Water Conservation Fund Act [16 U.S.C. 4601-**6a**(i)(1)(B)], as

amended: Provided, That funds unexpended and unobligated at the end of the fiscal year shall not be deposited into the special account established pursuant to section 4(i)(1)(A) of said Act and shall remain available for expenditure without further appropriation.

"(3) In order to increase the quality of the visitor experience at public recreational areas and enhance the protection of resources, amounts available for expenditure under this section may only be used for the area, site or project concerned, for backlogged repair and maintenance projects (including projects relating to health and safety) and for interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement relating to public use. The agencywide accounts may be used for the same purposes set forth in the preceding sentence, but for areas, sites or projects selected at the discretion of the respective agency head.

"(d)(1) Amounts collected under this section shall not be taken into account for the purposes of the Act of May 23, 1908 [16 U.S.C. 500] and the Act of March 1, 1911 (16 U.S.C. 500) [see Short Title note under section 552 of this title], the Act of March 4, 1913 (16 U.S.C. 501) [see References in Text notes under section 156 of Title 21, Food and Drugs], the Act of July 22, 1937 (7 U.S.C. 1012) [see section 1000 of Title 7, Agriculture], the Act of August 8 [28], 1937 [43 U.S.C. 1181a et seq.] and the Act of May 24, 1939 (43 U.S.C. 1181f et seq.) [43 U.S.C. 1181f-1 et seq.], the Act of June 14, 1926 (43 U.S.C. 869-4) [43 U.S.C. 869 et seq.], chapter 69 of title 31, United States Code, section 401 of the Act of June 15, 1935 (16 U.S.C. 715s), the Land and Water Conservation Fund Act of 1965 (16 U.S.C.

4601) [16 U.S.C. 4601-4 et seq.], and any other provision of law relating to revenue allocation.

"(2) Fees charged pursuant to this section shall be in lieu of fees charged under any other provision of law.

"(e) The Secretary of the Interior and the Secretary of Agriculture shall carry out this section without promulgating regulations.

"(f) The authority to collect fees under this section shall commence on October 1, 1995, and end on September 30, 2002. Funds in accounts established shall remain available through September 30, 2005."

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16 U.S.C. Sec. 4601-6c. Admission, entrance, and recreation fees

(a) Definitions

As used in this section:

(1) Area of concentrated public use

The term "area of concentrated public use" means an area administered by the Secretary that meets each of the following criteria:

(A) The area is managed primarily for outdoor recreation purposes.

(B) Facilities and services necessary to accommodate heavy public use are provided in the area.

(C) The area contains at least 1 major recreation attraction.

(D) Public access to the area is provided in such a manner that admission fees can be efficiently collected at 1 or more centralized locations.

(2) Boat launching facility

The term "boat launching facility" includes any boat launching facility, regardless of whether specialized facilities or services, such as mechanical or hydraulic boat lifts or facilities, are provided.

(3) Campground

The term "campground" means any campground where a majority of the following amenities are provided, as determined by the Secretary:

(A) Tent or trailer spaces.

(B) Drinking water.

(C) An access road.

(D) Refuse containers.

(E) Toilet facilities.

(F) The personal collection of recreation use fees by an employee or agent of the Secretary.

(G) Reasonable visitor protection.

(H) If campfires are permitted in the campground, simple devices for containing the fires.

(4) Secretary

The term "secretary" means the Secretary of Agriculture.

(b) Authority to impose fees

The Secretary may charge –

(1) admission or entrance fees at national monuments, national volcanic monuments, national scenic areas, and areas of concentrated public use administered by the Secretary; and

(2) recreation use fees at lands administered by the Secretary in connection with the use of specialized outdoor recreation sites, equipment, services, and facilities, including visitors' centers, picnic tables, boat launching facilities, and campgrounds.

(c) Amount of fees

The amount of the admission, entrance, and recreation fees authorized to be imposed under this section shall be determined by the Secretary.

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36 C.F.R. Sec. 261.15 Admission, recreation use and special recreation permit fees.

Failing to pay any fee established for admission or entrance to or use of a site, facility, equipment or service furnished by the United States is prohibited. The maximum fine shall not exceed $100.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE CHRISTINA A. SNYDER, JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	**CASE NO. CR 00-876-CAS**
PLAINTIFF,	)	
VS.	)	
TERRY DAHL,	)	
DEFENDANT.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
TUESDAY, JANUARY 9, 2001

* * *

[26] Q. Would you look at Exhibit 15 and tell us what this depicts.

A. This is the parking lot up by the Upper Camp Ground. It's a trail head for the Santa Cruz trail. And then the –

Q. Is that the trail that he rode that day up to Big Pine?

A. Yes. This would be the way to go.

Q. So in other words, he would park, cross the stream, then cross this parking lot, and there's a gate, I believe, depicted in there, he would go around that gate to enter the trail?

A. Yes. This is about a mile from the Boys Camp parking. And this is the gate people go around, start to go up Caruso Road and to Buckhorn Road to get to the top of Little Pine Mountain.

Q. Would you look at Exhibit 16, the photograph, and tell us what it shows.

A. This is a view of Little Pine Mountain on this ridge on the top with the pine trees as taken from the parking lot in Las Padres Ranger Station on Paradise Road.

Q. So this would be where the pine trees are on that high mountain in the background, the top of the trail that he told you he rode that day; is that correct?

A. That's correct.

Q. Would you take a look at photograph 17. And what does this depict?

A. This is showing some distance down the Buckhorn Road of the road that you would come up to get to the top of Little Pine.

[27] Q. So this is the first start of the trail that he would go up?

A. This is a portion of the dirt road.

Q. Looking back on the road?

A. Correct.

Q. And what is the distance to the top of the trail before one starts to descend?

A. From the Boys Camp, it's approximately 14 miles.

Q. And what is the elevation gain from Boys Camp to the top of the mountain?

A. Approximately 3,400 feet.

Q. So it goes from what to what?

A. It starts around 950 feet, and the highest part of the road on the top of Little Pine is 4350 feet.

Q. Would you look at the last photograph, Exhibit 18, and tell us what it depicts.

A. This is a photograph towards the top of Little Pine looking down the drainage where the parking trail goes down.

Q. And this would be where they would – a mountain biker would begin the descent back to the loop to the parking lot?

A. He could go down – this is a shortcut trail. But he would basically be around here and heading down on the hiking trail from there.

Q. Can you see at all the trail going down from the mountain in that photo?

* * *

[29] THE COURT: All right. It's vaguely relevant but –

MS. MC CASLIN: Your honor, I think my next question will tie it up as to why.

THE COURT: Okay. I'm going to let her ask it.

BY MS. MC CASLIN:

Q. Would you mark actually in the color the trail he took?

A. Well, he would start here at the Boys Camp, come up to the Upper Oso trail head, go up Fire Road, go up Comesa Road to Buckhorn Road up to the top of the mountain and then down the single track hiking trail back to the Boys Camp.

Q. Do you have a blue marker with you?

A. Yes.

Q. If you were a protestor and you wanted to be able to reach the most people in this area, where would you stand to hand out your literature?

MS. BARILOTTI: Your Honor, this is state of mind issue. Whether he was a protestor, where he would go has nothing to do with Mr. Dahl.

THE COURT: Well, I think the hypothetical is broad. But I'm sure she can ask where the greatest number of people congregate is something in his experience.

MS. MC CASLIN: Yes, Your Honor. And I'm responding to the endless times that we've heard he had no other way to protest.

THE COURT: Yeah. I understand where you're going.

* * *

[122] to account for their actions hides behind the First Amendment.

THE COURT: Let me just see if I understand your position, though. Are you – had he said at the beginning that I'm a protestor, under those circumstances, you would have – do you think he would be subject to prosecution if he'd said I'm a protestor at the outset?

MS. MC CASLIN: I think one of two things could of happened. Either if he had called or written and said I'm a protestor that, you know, Mr. Huxman, Agent Huxman, who was monitoring the program could very well have explained to him that that's fine, but, you know, if you are going to recreate while protesting, you can still protest and recreate, you need to pay versus just protesting.

THE COURT: And it's – it's your position, and I think it's at least to my way of thinking right now although I haven't made up my mind a fair reading of the statute, but if you are going to go onto the forest land and recreate and protest, then you must pay the fee.

MS. MC CASLIN: Yes, Your Honor. And that's not to say as they seem to say in their papers that you can't do both. You most certainly can do both. You just have to pay to recreate. You do not have to pay to protest. And we've had testimony here and the map shows and the pictures that he would of reached the most people if he'd been willing to forgo his pleasure and stand in the parking lot.

[123] THE COURT: Well, that's true, but that's not really to the point. If – if he had – he could of gone onto the trails to protest and reach other bikers but, as long as he was also recreating, he had to pay the fee. That's your position.

MS. MC CASLIN: Yes, Your Honor.

THE COURT: All right.

MS. MC CASLIN: And it's clear he was recreating. I mean, he fought me on it but, you know, a 20 mile loop with a 4,000 foot elevation gain – you saw the pictures. It's a beautiful area. He certainly derived pleasure from that and chose to combine pleasure with protest.

This is really more than a case about a failure to pay $5.00. And, in fact, truthfully, if Mr. Dahl is convicted, that is the only thing the government seeks is that he pay $5.00. It's not about punishing Terry Dahl for his beliefs. It is about, however, consequences for those who do not believe in laws and choose to break them. If that is allowed to happen if we allow persons that because they don't believe in a law to break it and ignore it, then we live in a lawless society. There must be a message sent to those who use the forest and recreate that they need to obey the law and pay the fee. And if they don't like the law, there's [sic] certainly free to write the law makers to try to get it changed.

And it's also a message to the people in the field that have the thankless task of leaving these notices of

* * *

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff v. TERRY DAHL, Defendant	No. CR 00-876-CAS GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS; DECLARATION OF RON HUXMAN DATE: November 27, 2000 TIME: 2:30 P.M. COURTROOM: 5 (Filed Nov. 27, 2000)

I.

INTRODUCTION

In 1996 the United States Congress enacted a law which required several agencies, including the Forest Service, to collect recreational fees at several areas or

sites. The purpose was to determine the feasibility of actual recreational users sharing the costs of the operation and maintenance of the areas from which they benefitted. (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134, section 315; 110 Stat. 1321, pp. 200-202 – copy attached as Exhibit A.)

One of the sites selected for the program includes all four Southern California National Forests – the Angeles, Cleveland,

* * *

Thus, that case supports the proposition that the law authorizes the Forest Service to collect a recreation user fee from Mr. Dahl, who was mountain biking in the Forest.

The law also requires the Forest Service to select areas, sites or projects for the fee program. The sites of the four Southern California forests were selected for the program. Thus, Mr. Dahl's failure to pay the recreation use fee in the Los Padres Forest constitutes a violation of 36 C.F.R. § 261.15, which makes it unlawful to fail to pay a use fee at a forest site.

Mr. Dahl's claim that because "recreation" is not defined in the public law he cannot be prosecuted is without merit. There can be no serious dispute that Mr. Dahl's 20 mile bike ride in the forest was a form of recreation. As defendant so aptly put it "plain words have plain meaning." (Defendant's motion p. 5, ln. 15).

C. The Recreation Fee Demonstration Program Is An Administrative Act Implemented by Congress Which Is Exempt From Conducting a NEPA Environmental Impact Statement

The National Environmental Policy Act (NEPA) requires all agencies of the Federal Government to include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action. 42 U.S.C.A. § 4332(C)(i). According to NEPA, major federal action includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. 40 C.F.R. § 1508.18. Human environment has been defined by NEPA as forest visitors about his objection to the fee. One can only wonder why, if Mr. Dahl was a bona fide protestor, he did not wait in the parking lot or at a designated trail head where he was most likely to encounter more visitors to educate than on his strenuous 20-mile bike trail. His claim of First Amendment protection denigrates the efforts of legitimate protestors, who forego the pleasure of recreation in the forest, while lawfully spreading their message of disagreement with Congress in mandating a recreation fee.

B. [sic] Congress Mandated the Forest Service to Collect a Recreational Fee

Defendant claims the Land and Water Conservation Fund Act ("LWCFA") does not permit charging access fees and prohibits making an entire forest site or area subject to fees. This argument is inapplicable to this

case because the law establishing the recreation fee program is entirely district [sic] from the LWCFA and specifically states that "*notwithstanding any other provision of law*" recreation fees shall be collected. (Public Law 104-134, section 315(b), 110 Stat. 1321-210.) This language does not repeal or amend LWCFA but makes it clear that Congress mandated the collection of the recreation fees not authorized nor prohibited in the LWCFA.

In *U.S. v. Maris*, 987 F Supp. 865 (D. Oregon) the issue was whether the recreation fee statute authorized the Forest Service to collect fees from persons merely traversing government owned lands on public highways. The magistrate judge rejected such an interpretation of the recreation fee law because it clashed with other legislation specifically prohibiting such tolls and the purpose of the law – collection of recreational user fees.

* * *

Offense: 36 CFR 261.15

Failure to pay a use fee while recreating in the Los Padres National Forest

Loc. Code	**United States District Court Violation Notice**
Violation No. **F** 107758	Print Officer Name Ranger Griffith
	Officer No. 283

YOU ARE CHARGED WITH THE FOLLOWING VIOLATION

Date and Time of Offense	Offense Charged
10-24-99 11:50 AM	36 C.F.R. 261.15

Place of Offense Los Padres National Forest

Offense Description
Failure to pay a use fee required by law while recreating in Los Padres National Forest

Defendant's Last Name	**First Name**	**M.I.**
Dahl	Terry	

Street Address 344 Pacific Avenue

City	**State**	**Zip Code**	**Date of Birth**
Santa Barbara	CA	93109	

Driver's License No.	**D.L. State**	**Social Security No.**

VEHICLE DESCRIPTION

Vehicle Tag No.	**Vehicle Tag State**	**Year**	**Vehicle Make**	**Vehicle Color**
[Illegible]				

A ☒ YOU MUST APPEAR IN COURT. **SEE INSTRUCTIONS.**

B. ☐ YOU MUST MARK ONE OF THE TWO CHOICES BELOW AND MAIL THIS FORM WITHIN 21 DAYS. **SEE INSTRUCTIONS.**

___ I wish to terminate this matter by paying the collateral shown below, enclosed.

___ I plead not guilty and promise to appear as required.

YOUR COURT DATE

Court Address You will be notified via mailing	Date 4/21/00
	Time 9:00 a.m.

Collateral (fine)	For payment by credit card, **SEE INSTRUCTIONS**

SEX	RACE	HAIR	EYES	HEIGHT	WEIGHT
☒ Adult ☐ Juvenile	Veh. Type	VIN			

Without admitting guilt, I promise to appear as required.

Signature

Previous edition is obsolete **Officer's Copy** FS-5300-4(9/97)